STATE OF MICHIGAN

COURT OF APPEALS

SUPERVISORS ASSOCIATION OF ENGINEERS, Charging Party-Appellant,	UNPUBLISHED September 2, 2003
v	No. 239835 MERC
PONTIAC SCHOOL DISTRICT, Respondent-Appellee.	LC No. 98-000236

Before: Markey, P.J., and Cavanagh and Saad, JJ.

PER CURIAM.

Charging Party Supervisors Association of Engineers (Charging Party) appeals as of right from a decision and order of the Michigan Employment Relations Commission adopting the recommended order to dismiss Charging Party's unfair labor practice charge. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

As part of a plan to ensure that classrooms would be cleaned everyday, the engineers represented by appellant were required to take on additional cleaning duties. Appellant filed an unfair labor practice charge against respondent alleging that it had violated MCL 423.210(1)(e), a provision of the Public Employment Relations Act that prohibits a public employer from refusing to bargain collectively. However, the administrative law judge found that the assignment of cleaning was "a management prerogative to which no bargaining duty attache[d]." The MERC agreed that respondent had no obligation to bargain before expanding the engineers' cleaning duties.

On appeal, appellant asserts that the nature of the engineers' jobs changed due to the deletion of their mechanical and other duties and that a change in the nature of the job is a mandatory subject of bargaining. However, the evidence showed that although the engineers were not able to complete some of their previous work, only a quarter or less of the workday was affected by the new cleaning duties. The argument that a change in duties could become so extensive that it would subsume the existing job was not at issue here, since such a small segment of the workday was affected. Further, it was acknowledged that the engineers had previously done cleaning. The engineers' job descriptions included cleaning duties. Appellant's claim that two job descriptions did not list cleaning responsibilities is not supported by a review of the descriptions. Thus, the finding that the assigned cleaning was an expansion of an existing duty and not a change in the nature of the job was supported by competent, material and

substantial evidence on the whole record. See MCL 423.216(e); *Port Huron Ed Ass'n v Port Huron Area School Dist*, 452 Mich 309, 322; 550 NW2d 228 (1996). This finding is conclusive. *In re Payne*, 444 Mich 679, 692; 514 NW2d 121 (1994).

Appellant next argues there was an impact on work hours. However, there was no testimony that anyone worked more than an 8-hour day. Moreover, there was no competent evidence of a change in wage payment based on the engineers being forced to forego breaks and lunch periods while being paid the same. It is acknowledged that no one was ordered to forego these breaks. While one employee apparently did so voluntarily, there was no evidence that others did the same. The evidence is consistent with the conclusion that respondent's expectation was that all the previous work might not get completed, and that respondent did not expect the engineers to work through breaks and lunch.

Appellant next asserts that a meeting attended by the superintendent and the association's president to discuss the change in duties constituted a bargaining session, and that, accordingly, there was no need for a demand to bargain. We will address this argument given the ALJ's indication that if a demand had been made, there may have been a requirement to bargain over the impact of the assignment changes. Appellant presents no authority for the proposition that this meeting was a bargaining session. We will not search for authority to support the proposition. *Staff v Johnson*, 242 Mich App 521, 529; 619 NW2d 57 (2000). We note that appellant's own witness described the encounter simply as a meeting.

Appellant also maintains that any failure to demand to bargain should be excused since the superintendent was not looking for input when he made the decision and a demand therefore would have been futile. However, that the decision was made without input from the engineers does not alone allow for the conclusion that a demand to bargain would have been rejected. Thus, it cannot be said that a demand would have been futile.

Finally, appellant asserts that since this involved a refusal to bargain, which is a statutory right and not a contractual one, the MERC erred in holding that it had to be handled by way of a grievance. However, since there was no demand to bargain, respondent's actions cannot be characterized as a refusal to bargain. Appellant also argues this was a change in classification, not a change in assignments governed by the clause in the contract that gave respondent the right to direct its workforce. The assertion that this was a change in classification is in the nature of an assertion of fact. As previously noted, the conclusion that it was simply an expansion of existing cleaning duties was supported by competent, substantial evidence on the whole record.

Affirmed.

/s/ Jane E. Markey
/s/ Mark J. Cavanagh
/s/ Henry William Saad